

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity
as President of the United States, *et al.*,

Defendants.

Case No: 5:21-cv-01136-F

PLAINTIFFS' UNOPPOSED MOTION FOR EXTENSION OF TIME

Pursuant to Local Civil Rule 7.1, Plaintiffs hereby move for a 30-day extension of all deadlines in this case. The U.S. District Court for the Southern District of Texas recently issued a nationwide injunction that enjoins the vaccine mandate imposed on federal employees by Executive Order 14043. That is the same mandate Plaintiffs challenge in this action. *See, e.g.*, 2nd Am. Compl. ¶¶ 1–2, 40, 71–75, 95, 122, 130–31 (ECF No. 49). While the federal government has appealed that injunction, the nationwide injunction remains in place. Accordingly, as set forth in more detail below, Plaintiffs believe that judicial economy and efficiency are served by extending all deadlines in this litigation for 30 days, which will allow for greater clarity on the fate of the current nationwide injunction. The Parties have conferred, and Defendants do not oppose the relief requested in this Motion.

BACKGROUND

Plaintiffs filed their complaint in this action on December 2, 2021. *See* Compl. (ECF No. 1). Plaintiffs subsequently moved this Court for a preliminary injunction (ECF

No. 9), and filed a motion for a protective order to proceed pseudonymously (ECF No. 40). Plaintiffs also filed an amended complaint on December 27, 2021. Am. Compl. (ECF No. 38).

On December 28, 2021, the Court denied Plaintiffs' preliminary injunction motion. *See* Order (ECF No. 41). On January 11, 2022, this Court noticed a scheduling conference for February 3, 2022. *See* Notice (ECF No. 42). Pursuant to that Notice, the Parties' initial disclosures were due on January 27, 2022, *see id.*, and the Parties exchanged their initial disclosures on that date. The Court's Notice also ordered the Parties to file a joint status report and discovery plan by January 31, 2022. *Id.* But on January 31, 2022, the Court struck the joint status report deadline. *See* Order (ECF No. 46).

On February 1, 2022, the Court issued an Order stating that its decision on Plaintiffs' motion for a protective order was forthcoming and that the Order "may have an effect on the issues to be addressed by way of the defendants' response (presently due on February 4, 2022) to the amended complaint." Order (ECF No. 47). Accordingly, the Court *sua sponte* extended the Defendants' response deadline to February 23, 2022. *See id.*

The next day, on February 2, 2022, the Court issued its Order denying Plaintiffs' motion for a protective order and directing Plaintiffs to file a second amended complaint by February 15, 2022, which "identif[ies] by name those individual plaintiffs who elect to proceed as named and identified plaintiffs in this action." Order at 9–10 (ECF No. 48). Additionally, the Court ordered Defendants to file their response to this second amended complaint by February 23, 2022. *Id.* at 10. In accordance with that Order, Plaintiffs filed their second amended complaint today. *See* 2nd Am. Compl. (ECF No. 49). Defendants'

response is now due by February 23, 2022, and the Parties' joint status report and discovery plan will be due soon thereafter, subject to further order from this Court.

While the proceedings in this case were ongoing, a similar action was proceeding in the U.S. District Court for the Southern District of Texas, where, on January 21, 2022, the court preliminarily enjoined, on a nationwide basis, the vaccine mandate imposed on federal employees by Executive Order 14043. *See Feds for Med. Freedom v. Biden*, No. 3:21-cv-356, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022), *appeal docketed*, No. 22-40043 (5th Cir. Jan. 26, 2022). The federal government subsequently filed a motion to stay the injunction pending appeal with the Fifth Circuit. On February 9, 2022, the Fifth Circuit denied the federal government's stay motion. *See Feds for Med. Freedom v. Biden*, No. 22-40043, 2022 WL 391820 (5th Cir. Feb. 9, 2022). Instead, the Fifth Circuit ordered that the motion is "carr[ied] with the case" and scheduled the case for oral argument on March 8, 2022. *See Docket Order, Feds for Med. Freedom*, No. 22-40043 (5th Cir. Feb. 9, 2022).

ARGUMENT

There is good cause to grant the requested relief. In this case, Plaintiffs claim that Executive Order 14043 exceeds the President's authority. *See* 2nd Am. Compl. ¶¶ 94–102 (Count I); ¶¶ 121–28 (Count II); ¶¶ 129–45 (Count III). That Executive Order is currently enjoined nationwide. And shortly after the Southern District of Texas issued its injunction, the Safer Federal Workforce Task Force issued guidance concerning the nationwide injunction. *See* Safer Federal Workforce Task Force, *Frequently Asked Questions Related to Compliance with the Applicable Preliminary Nationwide Injunction on Implementation and Enforcement of the Vaccination Requirement Pursuant to Executive Order (E.O.)*

14043 (Jan. 24, 2022) (attached hereto as Exhibit 1). The guidance document states in part:

To ensure compliance with an applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated, depending on the course of ongoing litigation, the Federal Government will take no action to implement or enforce the COVID-19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.

Id.

In light of the nationwide injunction, and the Fifth Circuit's decision not to stay that injunction pending appeal, a 30-day extension of all deadlines in this case will promote judicial economy. Specifically, this would extend to March 25, 2022, the deadline for Defendants to respond to the Second Amended Complaint filed today. By that time, the Parties and the Court will likely have greater clarity about the likelihood that Executive Order 14043 will remain enjoined nationwide. Extending all deadlines, including any deadline for the parties to file a joint discovery plan, will conserve both the Court's and the parties' time and resources.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a 30-day extension of all deadlines in this case should be granted, and the Court should enter the accompanying Proposed Order.

Respectfully submitted,

Mithun Mansinghani

Solicitor General

OFFICE OF THE ATTORNEY GENERAL

OF THE STATE OF OKLAHOMA

313 NE 21st Street

Oklahoma City, OK 73105

(405) 521-3921

Mithun.mansinghani@oag.ok.gov

/s/ Gene C. Schaerr

Gene C. Schaerr*

H. Christopher Bartolomucci*

Riddhi Dasgupta*

Brian J. Field*

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900

Washington, DC 20006

(202) 787-1060

gschaerr@schaerr-jaffe.com

cbartolomucci@schaerr-jaffe.com

sdasgupta@schaerr-jaffe.com

bfield@schaerr-jaffe.com

* Admitted *pro hac vice*

Counsel for Plaintiffs